STATE OF MICHIGAN

COURT OF APPEALS

	UNPUBLISHED February 16, 2012
In the Matter of PARE Minors.	No. 304870 Wayne Circuit Court Family Division LC No. 10-492592
In the Matter of PARE Minors.	No. 304871 Wayne Circuit Court Family Division LC No. 10-492592

Before: GLEICHER, P.J., and METER and DONOFRIO, JJ.

PER CURIAM.

In these consolidated appeals, the respondent-mother, L. Hooper, and a respondent-father, M. Jones, contest the termination of their parental rights to their minor children pursuant to MCL 712A.19b(3)(c)(*i*), (g) and (j). We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS

In February 2010, Hooper, the mother of five minor children, overdosed on prescription medication and was admitted to a psychiatric hospital. The responding officers left Hooper's five children at home in the care of Jones, the father of Hooper's two youngest children—a set of twins. Later that same evening, neighbors discovered Jones in an alcohol-induced stupor, and summoned the police. The circuit court authorized the Department of Human Services (DHS) to file a temporary custody petition.

In April 2010, the circuit court exercised jurisdiction over Hooper's four youngest children on the basis of a plea entered by respondents acknowledging that Hooper had attempted suicide, suffered from "a bipolar depression condition and panic attack disorder," supplied a urine sample at the hospital that tested positive for cocaine and marijuana, and "had been drinking alcohol." Jones's plea established that he had discovered Hooper "groggy" in her bedroom but did not immediately call for emergency assistance, and "had been at the home since about 3:00 p.m. drinking and passed out with the children in the home." The circuit court instructed Hooper to "participate in individual/substance abuse therapy, random drug screens,

domestic violence group meetings, parenting classes, couples therapy, and to complete a psychological evaluation." Jones's initial treatment plan obligated him to avail himself of identical services, with the exception of the psychological evaluation. The court additionally ordered both respondents to attend supervised parenting time with the children.[1]

During the first three months of the proceedings, respondents exhibited minimal compliance with their treatment plans. Evidence presented at a July 15, 2010, combined dispositional review and permanency planning hearing documented that six of the seven urine samples provided by Hooper had yielded positive results for cocaine, alcohol, and opiates. Hooper only intermittently attended parenting classes and domestic violence group therapy meetings, lacked employment, and had not worked for at least eight years. On at least three occasions, Hooper violated the court's order for supervised visitation by having unsupervised contact with the twins.[2] A police report admitted into evidence described her arrest while intoxicated after she had set fire to Jones's clothing.

Jones missed multiple drug screenings, failed to attend domestic violence and substance abuse therapy sessions, and participated with Hooper in the unsupervised visits with the children. After the July 2010 hearing, the circuit court continued the children's placements outside the home, maintained reunification as the permanency planning goal, but suspended respondents' rights to even supervised parenting time pending Hooper's achievement of a period of sobriety and Jones's showing of substantial treatment plan compliance.

The evidence presented at an October 2010 combined dispositional review and permanency planning hearing demonstrated some improvement on Hooper's part. She completed parenting classes and counseling for anger management and domestic violence. However, a caseworker opined that Hooper derived little benefit from the parenting classes, based on her earlier participation in an unsupervised visit with the twins during which she left them in the care of an irresponsible babysitter who allowed the children to play in the street. Four of Hooper's random drug screens tested positive for opiates, which she attributed to a back-pain-related Vicodin prescription. She continued to lack employment. Jones provided four negative screens, attended only 5 of 14 scheduled sessions for domestic violence, moved into a home with a relative that the caseworker deemed unsuitable for the children, and was "currently seeking employment." The court maintained reunification as the permanency planning goal, allowed respondents supervised visits, instructed them to comply with their treatment plans, and ordered Hooper to provide medical documentation relevant to her claimed Vicodin prescription.

[1] Hooper's oldest daughter was removed from the petition when Hooper stipulated to transferring sole custody to the child's father. Hooper's two older sons were placed in the care of their father as well but court jurisdiction was retained.

[2] The DHS had initially placed the twins with their maternal grandmother, who facilitated Hooper and Jones's unsupervised visitation in violation of court order. As a result, the DHS removed the twins from their grandmother's care and placed them in a licensed foster home.

At the January 2011 dispositional review and permanency planning hearing, respondents again demonstrated limited progress. Hooper had pursued therapy with regard to her mental health medications at the court's suggestion, attended parenting time sessions with regularity and appropriately interacted with the children, completed parenting classes and counseling for anger management and domestic violence, was in the midst of individual therapy, and reported for all drug screens. The primary outstanding concerns about Hooper included her positive screens for opiates and amphetamines, which she attributed to taking Vicodin and diet pills, and her lack of employment and housing. Jones completed anger management and domestic violence counseling, regularly appeared for parenting times and interacted appropriately with the children, and was attending parenting classes. However, he still lacked proper housing and employment, his individual therapist had terminated sessions "due to . . . not having a stable place to meet." Jones only occasionally appeared for drug screening; one of 17 screens tested positive for alcohol. The court kept reunification the goal and ordered respondents to continue complying with their treatment plans.

After another combined dispositional review and permanency planning hearing on March 2, 2011, the circuit court instructed the DHS to file a petition to terminate respondents' parental rights to the twins. The court explained that neither respondent had "a suitable home today" or "any income." Both had recent positive drug screens, Hooper demonstrated "significant mental health issues" and still had not provided the court with any information delineating "what her progress has been with respect to her mental health treatment." The court directed respondents to continue their participation in services and parenting time.

On March 28, 2011, the circuit court accepted for filing a DHS supplemental petition seeking to terminate Hooper's parental rights to all four minor children that remained under the court's jurisdiction and Jones's parental rights to the twins. At the termination hearing conducted in May 2011, a DHS caseworker testified that Hooper had completed most of the requirements imposed under her treatment plan, but submitted two recent drug screens that tested positive for cocaine, remained unemployed, and lived with her mother in a two-bedroom apartment too small to accommodate the twins. According to the caseworker, Jones displayed partial compliance with his treatment plan obligations, but failed to appear for most of his drug screens and currently lived in a motel. Although Jones had recommenced his seasonal employment, he had no income during the preceding fall and winter months.

Hooper acknowledged using cocaine approximately five times during the pendency of the proceedings, attributing her drug use to her "manic disorder" and the "holidays." She averred that she had only recently discovered that she had a manic mood disorder, and needed higher dosages of medications for mood stabilization and depression than her treating psychiatrist had prescribed during the last several years. Her plan for regaining custody of her children included obtaining food stamps, finishing the intensive substance abuse treatment she had recently commenced, and seeking employment. Hooper's therapist testified that Hooper had failed to disclose her recent cocaine use, despite weekly therapy sessions during which the two otherwise shared "an excellent [therapeutic] relationship." The therapist described Hooper's dishonesty as "a very big concern," and concluded that she needed "another year of intensive outpatient" treatment for substance abuse issues, and "another year or so" of therapy to address emotional issues.

Jones admitted to "having an alcohol problem" and that he had recently been arrested for operating a vehicle under the influence of alcohol and driving without a license. He further conceded that his one-bedroom motel room was not appropriate for the children, but claimed that his brother-in-law's four-bedroom residence although inhabited by seven other people, was suitable for himself and his children.

In a bench opinion, the circuit court terminated respondents' parental rights. After outlining the history of the proceedings, the court offered the following relevant findings:

> And the thing[] that is most troubling to the Court, when I listen to the testimony of Ms. Hooper and to Mr. Jones, is that neither one of them have come to grips with the fact that they are substance abusers.
>
> It is very clear to the Court from the onset of the case that Mr. Jones had a drinking problem.
>
> And it is very clear to the Court that that drinking problem apparently continues to persist, because he hasn't given me anything from which I can infer that he has in fact gotten a handle on his drinking.
>
> * * *
>
> And he still doesn't have a suitable home based on the testimony that has been given during this supplemental Petition. A one-room motel room for the children is not sufficient.
>
> The testimony says to me today that Mr. Jones doesn't even acknowledge that he has a drinking problem . . . .
>
> * * *
>
> When I turn to the mother's case, ...
>
> * * *
>
> . . . [W]e've never been able to progress any further than that supervised parenting time over the next fifteen months.
>
> That's very telling as to the mother's progress in regaining custody of her children.
>
> It's very troubling to the Court that I have a mother who has failed to address her own substance abuse problems that are both illegal substance usage in the form of . . . epistatic cocaine abuse, as well as prescription drug abuse.
>
> Because I'm convinced that it is prescription drug abuse that has also fed into part of the mother's problem.

> I have a mother [who for more] than four years was seeing a psychiatrist through the Lincoln Behavioral Center, and yet she decided after eight, nine years of treating with this psychiatrist that the psychiatrist didn't know what she was talking about, and that she was on the wrong medication, and that she hadn't helped her; blaming everybody and everybody except taking responsibility for yourself.
>
> * * *
>
> I have no doubt that [respondent mother] loves her children. I have no doubt that [the two oldest sons] love their mother, and [the twins] know her as their mother.
>
> But [the twins] now have been outside of her care for more than half their li[ves].
>
> And she's not any closer . . . today in being able to regain custody of any of these children . . . than she was in February 2010 when they came to the court's attention. . . .

The circuit court concluded that clear and convincing evidence justified termination of respondents' parental rights under MCL 712A.19b(3)(c)(*i*), (g) and (j). The court further concluded that termination of respondents' parental rights would serve the children's best interests, given their need for "some permanency and stability that is not forthcoming from either one of these parents."

II. STATUTORY GROUNDS FOR TERMINATION

Each respondent maintains that the circuit court erred in finding clear and convincing evidence supporting termination of their parental rights. The petitioner bears the burden of proving a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). Once the petitioner has proven a statutory ground for termination by clear and convincing evidence, the circuit court must order termination if "termination of parental rights is in the child's best interests." MCL 712A.19b(5). This Court reviews for clear error a circuit court's decision to terminate parental rights. MCR 3.977(K). The clear error standard controls our review of "both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest." *In re Trejo*, 462 Mich at 356-357. A decision qualifies as clearly erroneous when, "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Clear error signifies a decision that strikes the Court as more than just maybe or probably wrong. *In re Trejo*, 462 Mich at 356. We give deference to the circuit court's special opportunity to observe and judge the credibility of witnesses. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

A. MCL 712A.19b(3)(c)(*i*)

Clear and convincing evidence justified the termination of respondents' parental rights pursuant to MCL 712A.19b(3)(c)(*i*), which authorizes termination under the following circumstances:

> The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:
>
> (*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

As reflected in the April 2010 admissions that formed the basis for the circuit court's exercise of jurisdiction over the children, the conditions leading to the children's adjudication constituted Hooper's prescription drug overdose and use of illegal substances, including cocaine and marijuana, and Jones's excessive consumption of alcohol, which left him unconscious while the children were in his care. More than 13 months elapsed between the May 2011 termination hearing's commencement and the circuit court's initial order of disposition in April 2010, which included directives that respondents attend substance abuse counseling and submit to random drug screens.

At the termination hearing, substance abuse concerns persisted in relation to both respondents. Hooper's drug screens revealed the presence of cocaine in her system in May 2010, June 2010, and April 2011, and opiates and benzodiazepines at different points during the proceedings. Hooper acknowledged at the termination hearing that she had a problem with cocaine use dating back at least six years, and that she had used cocaine on multiple other occasions. Although Hooper regularly attended therapy to address her emotional and substance abuse issues, her therapist ultimately rendered a pessimistic prognosis.

Jones primarily ignored his responsibility to attend drug screens, and took minimal advantage of two substance abuse counseling referrals despite acknowledgement of an alcohol problem. In conclusion, clear and convincing evidence substantiated that the substance abuse condition that led to the children's removal from respondents' custody continued to exist more than a year later. The clear and convincing evidence of respondents' failures to make progress in addressing their substance abuse problems supported that there was no reasonable likelihood that respondents would be able to rectify their substance abuse difficulties within a reasonable time given the children's ages.

B. MCL 712A.19b(3)(g)

Clear and convincing evidence also supported the termination of respondents' parental rights pursuant to MCL 712A.19b(3)(g), which contemplates termination when "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." The circuit court did not clearly err in invoking subsection (g) in terminating respondents' parental rights, in light of (1) the clear and convincing

evidence of respondents' inability to achieve noteworthy progress in their courses of substance abuse treatment, together with (2) the clear and convincing evidence of record showing that neither maintained stable and suitable housing throughout the proceedings or a legal source of income sufficient to care for the children, and (3) with respect to Hooper, (a) a finding in her May 2010 psychological evaluation that she had "minimal to no insight into her behaviors and problems that led to removal of her children," (b) documented falsehoods which continued to minimize her substance abuse issues, and (c) involvement in two instances of domestic violence after the removal of her children. Alternatively phrased, by virtue of clear and convincing evidence, respondents failed to give the children proper care and custody, and no reasonable expectation existed that either respondent would be able do so within a reasonable time.[3]

C. REASONABLE EFFORTS BY THE DHS

Hooper contests the propriety of the termination of her parental rights on the ground that the DHS neglected to make reasonable efforts to help her improve her parenting skills, stability, and overall situation. Hooper did not raise any complaint concerning the adequacy of DHS assistance or service referrals before the termination hearing. As this Court observed in *In re Terry*, 240 Mich App 14, 27; 610 NW2d 563 (2000):

> In the present case, respondent did not raise a challenge to the nature of the services or accommodations offered until her closing argument at the hearing regarding the petition to terminate her parental rights. This was too late in the proceedings to raise the issue. The time for asserting the need for accommodation in services is when the court adopts a service plan, not at the time of a dispositional hearing to terminate parental rights.

Even considering Hooper's assertions, we find that they lack merit. Hooper complains that the DHS "made no effort to assist" her in finding housing or a job, adding that she "sought out therapists and outpatient programs on her own." "In general, when a child is removed from the parent's custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005), citing MCL 712A.18f(1), (2), and (4). Here, the array of services the DHS offered to Hooper included psychological and psychiatric evaluations, parenting classes, domestic violence therapy, individual therapy for substance abuse and emotional issues, drug screens, and parenting time. The provision of these services satisfies the reasonable efforts standard. Furthermore, although Hooper suggests that "she would have been way ahead in her treatment plan" if the DHS had "exposed [her] to half of the resources . . . at its disposal for housing and employment," she does not clearly explain how she would have been better served had the worker offered additional services. "The fact that respondent [mother] sought treatment

[3] Because clear and convincing evidence establishes two statutory grounds for termination, while only one ground need exist to merit the termination of parental rights, MCL 712A.19b(3), we need not address the circuit court's invocation of MCL 712A.19b(3)(j) as an additional ground for termination.

independently in no way compels the conclusion that petitioner's efforts toward reunification were not reasonable[.]" *Id.*

II. CHILDREN'S BEST INTERESTS

Respondents challenge the circuit court's finding that termination of their parental rights would serve the children's best interests. "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights[.]" MCL 712A.19b(5). At regularly attended supervised visits, each respondent undisputedly interacted appropriately with the children, and the children and respondents exhibited mutual bonds of affection. But despite receiving opportunities to participate in multiple services over the course of more than a year, both respondents still labored with the same significant substance abuse problems that had precipitated the children's initial removal from their custody, neither respondent showed reasonably forthcoming stability in the areas of housing or legal income, and Hooper had recent domestic violence entanglements despite having completed domestic violence therapy. Because of respondents' insufficient progress and the children's need for permanency and stability, we detect no clear error in the circuit court's finding that termination of respondents' parental rights served the children's best interests.

Hooper inaccurately asserts in her statement of the question presented that the circuit court "clearly erred in finding that termination was in the children's best interests *without determining whether the children were of sufficient age to give their views of the termination*." (Emphasis added). In support of this proposition, Hooper proceeds to cite a subpart of the court rule governing permanency planning hearings, MCR 3.976(D)(2) ("[t]he court shall obtain the child's views regarding the permanency plan in a manner appropriate to the child's age"). At no point, however, does Hooper identify any authority obligating the circuit court to ascertain at a termination hearing "whether the children were of sufficient age to give their views of the termination." Consequently, we decline to address this inadequately briefed issue. *Blackburne & Brown Mortgage Co v Ziomek*, 264 Mich App 615, 619; 692 NW2d 388 (2004) ("[i]nsufficiently briefed issues are deemed abandoned on appeal," because "[a]n appellant may not merely announce its position or assert an error and leave it to this Court to discover and rationalize the basis for its claims, unravel or elaborate its argument, or search for authority for its position") (quotation marks and citations omitted). Moreover, Hooper does not explain how any violation of MCR 3.976(D)(2) rendered the result of the proceedings substantially unfair or "inconsistent with substantial justice." MCR 3.902(A); MCR 2.613(A).

III. JUDICIAL MISCONDUCT

Hooper lastly submits that at the termination hearing, the circuit court exhibited improper conduct in several respects. In light of Hooper's failure to pursue a motion for disqualification before the circuit court under MCR 2.003, she has not preserved this issue for appellate review. *Evans & Luptak v Obolensky*, 194 Mich App 708, 715; 487 NW2d 521 (1992); *In re Schmeltzer*, 175 Mich App 666, 673; 438 NW2d 866 (1989). Nonetheless, we will briefly consider Hooper's assertions. We review de novo whether a party has established any facts that demonstrate a legal basis for disqualification. *In re Contempt of Henry*, 282 Mich App 656, 679; 765 NW2d 44 (2009).

Hooper does not identify any subrule of MCR 2.003 pursuant to which she seeks disqualification of the circuit court, but she seemingly intends to urge for the court's disqualification on the basis that the court "is biased or prejudiced" against her. MCR 2.003(C)(1)(a). To establish a judge's bias or prejudice, a litigant must overcome a heavy burden of judicial impartiality. *Cain v Dep't of Corrections*, 451 Mich 470, 497; 548 NW2d 210 (1996). The litigant must demonstrate that the judge possessed an actual, personal, and extrajudicial bias against her. *Id*. at 495-496. "Judicial rulings, in and of themselves, almost never constitute a valid basis for a motion alleging bias, unless the judicial opinion displays a deep-seated favoritism or antagonism that would make fair judgment impossible." *Gates v Gates*, 256 Mich App 420, 440; 664 NW2d 231 (2003) (quotation marks and citation omitted). Similarly, "[o]pinions formed by a judge on the basis of facts introduced or events occurring during the course of the current proceedings, or of prior proceedings, do not constitute bias or partiality unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Schellenberg v Rochester Lodge No 2225 of the Benevolent & Protective Order of Elks*, 228 Mich App 20, 39; 577 NW2d 163 (1998).

Hooper initially maintains that the circuit court improperly "interrupted and questioned witnesses to the point where [t]he [court] took over the examination and worked to establish a clear and full record for the state." A circuit court judge bears the responsibility to make a ruling on the propriety of termination of parental rights, as "[t]here is no right to a jury determination." MCR 3.977(3). The court rules governing juvenile proceedings expressly invest the circuit court with the authority to "examine a witness," whenever the court "believes that the evidence has not been fully developed." MCR 3.923(A)(1). Furthermore, MRE 611(a) directs a court to "*exercise reasonable control over the mode* and order *of interrogating witnesses* and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth[.]" (Emphasis added). Additionally, MRE 614(b) recognizes that "[t]he court may interrogate witnesses, whether called by itself or by a party." Our review of Hooper's multiple averments of improper questioning by the circuit court and the termination hearing transcripts reveal nothing that can be characterized as combative or otherwise improper questioning by the court, but only proper questions aimed at fully developing the record. MCR 3.923(A)(1).

Hooper next incorrectly suggests that the circuit court mischaracterized her testimony concerning her recent instances of cocaine usage. The challenged passages of the termination hearing transcript show only proper questioning by the circuit court about the impetus for the episodes of Hooper's acknowledged cocaine usage, a highly relevant topic considering that substance abuse prompted the children's removal from respondents' custody. On questioning from petitioner's attorney, Hooper attributed her April 22, 2011, positive cocaine screen to her "manic disorder." Shortly thereafter, when asked how "many times have you used cocaine since . . . the beginning of 2010," respondent mother answered, "Approximately, five times." Hooper then denied that she could recall precisely when these instances of cocaine use took place, but elaborated, "Well, recreationally, maybe, I guess, I believe maybe holidays. I would say New Year's Eve . . . ." Given respondent mother's testimony of two reasons prompting her cocaine usage, holidays and mania, the court appropriately asked several clarifying questions that referenced some of Hooper's cocaine use having been celebratory. The court also accurately summarized Hooper's testimony about her celebratory cocaine usage in its findings of fact.

Hooper finally maintains that the circuit court unfairly and repeatedly referred to her as unworthy of belief. But again, none of the three charged instances of judicial misconduct have a basis in the record. The cited portions of the termination hearing transcript reveal comments by the court that question Hooper's veracity in several respects, entirely appropriate comments in light of the record evidence of Hooper's multiple falsehoods throughout the proceedings, including her minimizations of her substance abuse problem in both her psychological and psychiatric evaluations, and the falsehoods she told her substance abuse therapist about the extent of her cocaine use.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Patrick M. Meter
/s/ Pat M. Donofrio